LEDCHUMANAN NAGAPPAN

v.

R. NADARAJAH & 2 ORS.

HIGH COURT, SHAH ALAM
DATO' MAHADEV SHANKAR J.
[CIVIL SUIT NO. 22-48-93]
4 FEBRUARY 1993

INJUNCTION: Action against trustees - Non compliance with Government Proceeding Ordinance - Locus standi - No damage to person or property of plaintiff • Rules of the High Court O. IS r. 16 • Does it include religious rituals.

The plaintiff filed an action and applied for an injunction to stop the world famous Thaipusam festival to be held at Batu Caves. By the order of the Selangor Supreme Court in Civil Suit No. 58 of 1929 the Subramaniar Temple Batu Caves and the property and funds thereof were constituted to the charitable trust. Also the sole prerogative of determining and conducting the rituals of worship at the temple was vested in the Board of Management.

On 27 December 1992, one of the five priests who performed the Temple ceremonies died, The exact time of death was not determined. The plaintiff filed this suit and application i*nter alia* that the temple should be closed until it was consecrated due to the death of the priest.

Held:

[1] Nowhere in the writ of summons and statement of claim is there allegation of actual physical injury or damage to the person or property of the plaintiff. The relief prayed for are for declaratory orders and orders by way of injunctions to prevent the trustees of the said charity and their agents from carrying out the necessary duties which were solely entrusted to them for the due administration of the said charity. Consequently this suit and the interim injunction sought was an overt attempt by the plaintiff to supplant the trustees of the said Temple and interpose himself as the person who should direct or conduct such consecration ceremonies.

[2] As there had been a total failure to comply with the three preliminary requirements this action should not be allowed to proceed. These were the existence of at least two persons having an interest, the prior written consent of the Attorney General, and the suit itself being brought in the name of the Attorney General. On this ground alone this action and the application was wholly misconceived and failed.

[3] It is well established in our law that he who comes to equity must come with clean hands. Even if the plaintiff had a cause of action, (and he has none in this case) all the reliefs sought are equitable reliefs in the discretion of this Court. By his own conduct the plaintiff had disentitled himself to relief on equitable principles.

[4] In the present case the plaintiff is not possessed of any legal character or right to perform rituals at the said Temple or question the ritual which being performed by the agents of the Temple trustees. He therefore does not have the necessary preliminary qualification to bring an action for declaration under s. 41 of the Specific Relief Act 1950. In short he has no *locus standi.*

[5] The Courts power to make declaratory orders under 0.15 r. 16 of the Rules of the High Court 1980 are limited to legal and equitable rights and do not extend to moral, social or political matters. This category is now extended to matters of religious ritual as well. Since the claims for the injunctory orders both in the statement of claim and the interlocutory application are also predicated on the alleged non-defilement or defilement of the rituals performed - issues which this Court cannot and will not try - it follows that these claims must also fail because they cannot be made here.

[Application dismissed. Action struck out].

Cases referred to:

Donoghue v. Stevenson [1932] AC 562 (**cit**)
P.R. Aiyanachariar & Ors. v. Sri Uthamanambi Sadagopachariar & Ors. [1939] AIR Madras 757 (**cit**)
M. Appadorai Ayyangar & Ors. v. P.B. Annangachriar & Ors. [1939] AIR Madras 102 (**foll**)
Lim Cho Hock v. Government of the State of Perak & Ors. [1980] 2 MLJ148

Legislation referred to:

Government Proceedings Ordinance 1956, ss. 9, 9(2)
Rules of the High Court 1980, 0.15 r. 16
Specific Relief Act 1950, s. 41

For the plaintiff - Jeganathan; M/s. Jeganathan & Co.
For the defendant - R.K. Nathan (Thambirajah with him); M/s. Thambirajah & Associates

JUDGMENT

Mahadev Shankar J:

The Thaipusam festival held every year at Batu Caves is a world famous event. It is focussed on the shrine of Lord Murugan which was inaugurated there in 1891. That shrine today is renowned as the Subramaniar Temple Batu Caves (hereafter referred to as the Temple). This year the Thaipusam festival will be celebrated at the Temple on 5 and 6 February. If the previous attendances are anything to go by, nearly three quarters of a million people will converge on the Temple tomorrow.

The plaintiff filed this action and applied for an interim injunction that the festival be stopped. Last week I dismissed this application and struck out this action. Today I shall say why.

In the statement of claim the plaintiff is styled as a Yogi and a Spiritualist. Annexed to his affidavit-in-support of this application is a very colourful leaflet in which he describes himself as Malaysia Athinam 293 Gurumaha Sannithaanam Thavathiru Athmananantha Adigalaar. He claims that he was so appointed by the 292nd Guru Maha Sannithanam who is the spiritual head of the Mathurai Athinam South India at an investiture ceremony held on 22 February 1987 at the Athmanantha Guru Kulam at Jalan Jelebu Seremban. It would appear from this leaflet that this establishment (hereafter referred to as the Gurukulam) is the centre of the plaintiffs operations. Here he runs what he describes as a holiday resort and health farm where he imparts yogic knowledge and cures incurable diseases in addition to rehabilitating drug addicts.

By the order of the Selangor Supreme Court in Civil Suit No. 58 of 1929 made on 28 November 1930 the Mariamman Temple, High Street, Kuala Lumpur, the Ganesar Temple, Old Pudu Road, Kuala Lumpur and the Subramaniar Temple, Batu Caves, and the property and funds thereof were constituted to be a charitable trust (the said charity) for the benefit of the Ubayakarars of the Mariamman Temple. An "ubayakarar" is a named worshipper cum donor who belongs to an associated class or group of worshippers and donors. This group is called an "Ubayam". When the Trust was originally constituted in 1930 there were 12 named groups or Ubayams who appear to have been classified rather like guilds. Thus milkmen formed one Ubayam, oil merchants another. Writer and Clerks a third and so on. More to the point these Ubayakarars were given the power to appoint the Board of Management in whom alone was vested the control and management of the Temples aforesaid.

On 25 May 1981 in Kuala Lumpur High Court Originating Summons No. A 32 of 1981 Y.A. Hashim Yeop A. Sani J. (as he then was) made an order approving a proper scheme for the future management and regulation of the said charity. By the very first Article of this order it was expressly provided that:

> All feasts, festivals, ceremonies and Ubayams hereafter held or conducted in or in connection with the said Temples shall be held and conducted subject to the control and supervision of the said board of management.

By Article 20 the Board of Management was empowered to appoint a Religious Committee which was entrusted with the duty to prescribe and advise the Board of Management respecting the rites and ceremonies to be observed and performed at worship, festivals ... and other functions.

From the above it must be fully apparent that the sole prerogative of determining and conducting the rituals of worship at the Temple was vested in the Board of Management aforesaid.

The plaintiff claims that sometime in September 1992 he was requested by a section of the Indian community to pray at the Temple on 4 October 1992 "for divine intercession and guidance". He does not identify the section of the Indian community in question. Two affidavits he has filed, fully support the following findings of fact.

In a newspaper article in *The Star* on 29 September 1992 it was reported that a rally was to take place at the Batu Caves "this Sunday" (that is, 4 October 1992). The newspaper continues:

> The meeting, called by Seremban priest Thavathiru Athmanantha Adigal is expected to demand the resignation of Samy Vellu.

About the same time a very large advertisement was placed in theTamil Malaysia Nanban headed "Samy Vellu to Step Down" - Indian Community to be enlightened" - "Mass Prayer" - Appeal memorandum will be submitted to the Honourable Prime Minister." A prominent photograph of the plaintiff appears in this

advertisement where he is described as "Patron".

On 2 October 1992 the plaintiff puts up a letter of that date on the letter head of his Gurukulam. It is addressed to the Honourable Prime Minister. Although it is headed "A Prayer for Unity" the letter, to put it very mildly, contains strong political overtones. It is very difficult to reconcile paragraph 7 and 8 of this letter with the avowed object of unseating Dato' Samy Vellu. They read as follows:

> 7. We do not seek to champion any particular person or party but seek a chance to pray for Divine Guidance and Intervention in the Indian Community and through that a better future for the Nation as a whole. I am not a political aspirant but a well wisher for both the Community and the Nation.
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> 8. My way is to Pray and to lead others in Prayer for Divine Intercession. I have had to take this step because of the present situation of the Indian Community and the serious consequences in the future. I have been petitioned by members of the Indian Community and my followers to have such a prayer. I have chosen the Sri Subramaniam Temple at Batu Caves because a Teniple is the proper place for public prayer and the Sri Subramaniam Temple at Batu Caves is a National Heritage and a focal point of the Indian Community.

On 3 October 1992 there was a press conference. The report appeared in the *Tamil Malaysia Nanban* on the morning of 4 October 1992 to confirm that the rally would proceed as planned. There is a photograph appearing with the report in which the plaintiff is given pride of place in the Main chair with the microphone. He is flanked on his right by the Organising Chairman Mr. V. Suppiah, and on his left by the Vice Chairman Mr. Chinnappan and his lawyer Mr. Jaganathan who appeared as his counsel in these proceedings.

Although the newspaper advertisement aforesaid was made by the "Persatuan Kemajuan Tamilar" the plaintiff through his Counsel has admitted that it was done with the plaintiffs knowledge and approval. Indeed with the kind of publicity with which he associated himself it is hard to see how he could have claimed otherwise. There is no evidence that he ever sought a retraction of the press statement that he had called for the rally or that he was its Patron. The letter to the Prime Minister is signed by him alone.

I have noted that a copy of that letter was purportedly intended for the President of the Maha Mariamman Temple. It is not in evidence if it was in fact sent or received. What has been admitted by the plaintiff through his Counsel is that he did not seek the permission of the Board of Management or anybody in authority at the Temple to conduct the ritual he proposed to carry out.

Indeed it is manifestly obvious from the plaintiffs affidavits that he was well aware that the Temple authorities were opposed to the ceremonies which he intended to perform.

There is a conflict of evidence as to what the plaintiff did and the proper interpretation to be placed upon the significance of his acts.

If the plaintiff is to be believed all that he did despite the ostensible disapproval of the Temple authorities was to ascend the stairs into the Temple at 4.00 p.m. There immediately after the Temple priest had performed the authorised ceremony or pooja, the plaintiff proceeded to 'Petition' the Divinity for Unity and Guidance. Although the Temple authorities attempted to stop this "Petition" and requested police to intervene the plaintiff continued to conclusion. The form and content of this petition is not touched upon by the plaintiff. However he has stated that he was requested by a certain section of the Indian community "to plead for Divine Intercession on their behalf as they were ignorant in the proper manner of praying". The objective of that section of the Indian community was clear from the advertisements. If as must follow from this that the plaintiff was pleading for them the objective of the plaintiff must have been the same. On his own admission he was there to plead on their behalf. Anyway after the petition was concluded the plaintiff says he came down the stairs, poured milk and water upon himself to signify the ending of the prayers, and that was that.

The defendants' version of what happened is quite different. They accused the plaintiff of being a leading actor in the press campaign. They say he arrived at 3.00 p.m. at the Temple with a retinue which included musicians and young girls bearing milk vessels. After uttering his prayers they say the plaintiff dropped his blue shawl and draped a black one to signify mourning. He read the Memorandum to the Prime Minister. Then he came down the stairs performed a Homam (a ritual requiring the use of fire) and ritually bathed himself. The

defendants say that this ritual bathing is the final act of a funeral ceremony. By doing this the defendants claimed the plaintiff desecrated the Temple which required it to be purified.

On 22, 23 and 25 December an advertisement appeared in the Tamil Nesan, the *Tamil Malaysia Nanban and the Thina Murassu.* This was a public announcement that between 25 December 1992 and 27 December 1992 certain grand fire-sacrifice ceremonies would be performed at the Temple. The ceremonies in question were listed in the advertisement. The last of the ceremonies was to be performed at 6.30 p.m. on 27 December 1992.

In so many words it was stated in the advertisement that these ceremonies would be held:

> ...for the purpose of bringing spiritual, material, and physical blessings and success to the public and also for the purpose of reinstating the sanctity of the holy ground desecrated by 'His Holiness Atmananda' under the guise of conducting a "palabishagam ceremony" (that is, a ritual ablution with milk).

These Temple ceremonies were to be performed by five priests, and it appears that they were so performed. A mishap occurred. Some time on 27 e December 1992 one of the five priests took ill. His name was Somu Vadyar. He was rushed to the General Hospital, but could not be saved. Again there is a conflict of evidence.

The plaintiffs contention, based on hearsay evidence and some alleged discrepancies in the time and place of death stated in the official documents is that Somu Vadyar died at about noon whilst he was actually in the midst of conducting the ceremonies. It is further contended that he was the chief priest performing the ceremony.

The defendants quoting eye-witness testimony claim that the chief priest was in fact one Kulanthu Rama Iyer, that the morning ceremonies on 27 December had been completed by 11.30 a.m., that Somu Vadyar then had his lunch and went to his room to have a nap, complained of chest pains at 2.45 p.m. and was fr rushed to the hospital. They claim that he died on the way to the hospital and was pronounced dead on arrival. The original evening ceremony was performed as scheduled by theother priests.

At this juncture I would observe that the precise moment of a person's death is the subject of some controversy even amongst medical experts, that is, is it when the heart stops beating or when the brain stops functioning? It has not been made known to this Court on what basis the opinions as to this time of death were based.

The fire ceremonies, and the death of Somu Vadyar were made known to the public. The plaintiff did not react until 12 January 1993, that is, a delay of more than two weeks. That day he sent a letter to the first defendant through his solicitors complaining:

(1) Firstly that the allegation in the defendants advertisements on 22nd, 23rd and 25th December constituted a libel for which proceedings would be instituted.

(2) Secondly that the ceremonies performed between 25 and 27 December were not really intended to achieve the objects published by the defendant's advertisement but was infact an invocation to certain spirits to cause harm to the plaintiff.

(3) That by reason of the death of Somu Vadyar the ceremonies could not be properly completed and the spirits invoked were still trapped in the Temple.

(4) That the defendants had thereby defiled the Temple and no further ceremonies should be conducted there until the place had been properly consecrated in a manner to be approved by the plaintiff. In this context the plaintiff had the Thaipusam festival very much in mind.

The defendants solicitors replied to this letter denying the status of the plaintiff, or his right to dictate how the affairs of the Temple should be conducted or that the ceremonies were incompleted on 27 December.

This action was filed on 22 January 1993. The reliefs prayed for are:

(a) declarations that

(i) the plaintiff sprayer on 4 October 1992 was benevolent and did not defile the Temple;

(ii) the defendant's ceremonies between 25 to 27 December were malevolent and descrated the Temple;

(iii) alternatively that the death of aforesaid defiled the place of worship and continue to defile it;

(b) for orders that

(i) the Temple be closed till further order;

(ii) The Temple trustees do consecrate it on terms to be ordered by the Court; or

(iii) Alternatively that the plaintiff do consecrate it on terms to be ordered by the Court.

The basis for the declarations aforesaid is that the defendants had a duty of care in making statements on religious matters, and that they had failed in that duty by making the statement contained in their advertisements that the plaintiff defiled the Temple, thereby exposing him to alleged legal liability for any act or accident which may arise at the Temple. Thebasis for the closure and consecration orders aforesaid is that the defendants allegedly defiled the Temple by their fire ceremonies and by their omission to consecrate the Temple in a manner approved by the plaintiff to remove the alleged defilement aforesaid and from the death of Somu Vadyar, the plaintiff had been exposed to legal liability from users of the Temple should any harm befall them.

The claim for the interim injunction is specifically to stop the defendants from holding any ceremony at the Temple on 5 or 6 February or at any time thereafter until final disposal of this action or further order.

In the course of his submission plaintiffs Counsel told this Court that the allegedly defamatory aspects of the defendant's advertisements were going to be made the subject of separate proceedings. What he was seeking here was a *quia timet* injunction to prevent potential harm to the plaintiff and other users of the Temple on 5 and 6 February.

The order made by the Selangor Supreme Court in 1930 earlier referred to, expressly constituted the said charity to be a charitable trust. Under the terms of that order and the subsequent orders made thereunder this was an express trust for religious purposes. The material words of s. 9 of the Government Proceedings Ordinance 1956 (Revised 1988 Act 359) are as follows:

> 9(1) In the case of any alleged breach of any express ... trust for ... religious ... purposes, or where the direction of the court is deemed necessary for the administration of any such trust, the Attorney General or two or more persons having an interest in the trust, and having obtained the consent in writing of the Attorney General may institute a suit... for the purpose of -
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> (a) asserting any interest or right in the trust property;
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> (b) removing any trustee;
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> (i) obtaining such further or other relief as the nature of the case may require.
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> (2) No suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such a trust as is therein referred to except in conformity with the provisions of that sub-section.

It is observed that s. 9(2) is mandatory. The response of Encik Jeganathan, Counsel for the plaintiff was that this action was one for relief based on the general doctrine first articulated by Lord Atkin in *Donoghue v. Stevenson* [1932] AC 562 that a man must not harm his neighbour. It was claimed that the cause of action here was in the alleged negligence of the defendants. It was further submitted by Encik Vadiveloo, second Counsel for the plaintiff that s. 9 aforesaid only concerned the internal affairs of the trust. On both counts it was submitted that the consent of the Attorney General was not necessary and that the plaintiff was entitled to bring this action alone in his own right.

With respect to both plaintiffs Counsel, these submissions are devoid of merit. Nowhere in the writ of summons and statement of claim is there an allegation of actual physical injury or damage to the person or property of the plaintiff. The reliefs prayed for are for declaratory orders and orders by way of injunctions to prevent the trustees of the said charity and their agents from carrying out the necessary duties which were solely entrusted to them for the due administration of the said charity. Consequently it is the opinion of this Court that this suit and the interim injunction sought was an overt attempt by the plaintiff to supplant the trustees of the said Temple and interpose himself as the person who should direct or conduct such consecration ceremonies.

The Attorney General's representative was in Court although not named as a party. The Attorney-General's view was that as there had been a total failure to comply with the three preliminary requirements this action should not be allowed to proceed. These were the existence of at least two persons having an interest, the prior written consent of the Attorney General, and the suit itself being brought in the name of the Attorney General.

With respect, this Court agreed wholly with the Attorney General and Counsel for the defendants. On this ground alone this action and the application was wholly misconceived and failed.

Ordinarily it would not be necessary to say a anymore. But this is not an ordinary case. It affects the whole of the Hindu community and the public at large. It is therefore in the public interest that this Court makes some further observations.

All festivals in the said Temple were subject to the control and supervision of the said Board of Management. The board acted as the agents of the Ubayakarars who had appointed them. These Ubayakarars and the Ubayams to which they belonged are the active beneficiaries of this trust.

In these circumstances the role of ordinary members of the public who visit the Temple is a passive one. Every Hindu may enter the Temple to obtain sight of the deity. He may perform his act of worship from a certain distance in the main body of the Temple. He may engage one of the Temple priests appointed by the Board of Management to perform the ritual in accordance with the edicts or Agamas governing the Temple and in the manner approved by the Board of Management. What he cannot do is to insist on using a ritual which has not been authorised by the Board of Management in this case, who alone were vested with the power to decide what ceremonies should be performed.

This Court is entirely in agreement with Encik R. Nadarajah the first defendant when he stated at paragraph 19 of his affidavit:

> ... no worshipper, however learned, has a right to insist on using a ritual not in use at the said Temple, and that the use of competitive rituals simultaneously at the service in a Temple would not be conducive to the orderly and revered conduct of the temple service.

In the present case the plaintiffs acts went well beyond an act of passive worship to one of the active conduct of a ceremonial on behalf of his followers which he staged in defiance of the temple authorities. In doing so I hold that he knowingly transgressed the rights expressly vested in them by the Supreme Court and High Court at Kuala Lumpur.

It is well established in our law that he who comes for equity must come with clean hands. Even if the plaintiff had a cause of action, (and he has none in this case) all the reliefs sought are equitable reliefs in the discretion of this Court. By his own conduct the plaintiff has disentitled himself to relief on equitable principles.

As a matter of law, however, I hold that the plaintiff had no right to hold the ceremony which he did at the said Temple on 4 October 1992 or to dictate what ceremonies the Temple authorities could or did hold between 25 and 27 December 1992. This emerges from the terms of the Court orders aforesaid.

As to whether the ceremony performed by the plaintiff was a benevolent one, which did not defile the temple, or whether the ceremonies performed by the defendants was a malevolent one, I have read with interest the cases of P.R. *Aiyanachariar & Ors. v. Sri Uthamanambi Sadagopachariar & Ors.* [1939] AIR Madras 757 (where a clear distinction is drawn between a worshipper's right to present himself at a Temple as opposed to the exclusive right of the Temple trustees on matters of ritual), and *M. Appadorai Ayyangar & Ors. v. P.B. Annangachriar & Ors.* [1939] AIR Madras 102 (where it was held that Civil Courts in India have no ecclesiastical jurisdiction and cannot decide questions of ritual in a temple).

In the present case the plaintiff is not possessed of any legal character or right to perform rituals at the said Temple or question the rituals which are being performed by the agents of the Temple trustees. He therefore does not have the necessary preliminary qualifications to bring an action for a declaration under s. 41 of the Specific Relief Act 1950. In short he has no *locus standi*. Furthermore the issues raised are not justiciable in the Courts. As was decided in *Lim Cho Hock v. Government of the State of Perak & Ors.* [1980] 2 MLJ 148 the courts powers to make declaratory orders under 0.15 r. 16 of the Rules of the High Court 1980 are limited to legal and equitable rights and do not extend to moral, social or political matters. I would now extend this category to matters of religious ritual as well. Since the claims for the injunctory orders both in the statement of claim and the interlocutory application before me are also predicated on the alleged non-defilement or defilement of the rituals performed - issues which this Court cannot and will not try - it follows that these claims must also fail because they cannot be made here.

Something now needs to be said about the plaintiffs Counsel's attempt to keep this case afloat by relying on the duty of care articulated in *Donoghue v. Stevenson* [1932] AC 562. It is elementary law that there are three ingredients

without which a claim in negligence cannot succeed. These are

(a) a legal duty to take care,
(b) a breach of that duty and
(c) damage which is the direct result of that breach.

The defendants owed no legal duty whatsoever to the plaintiff to allow him to perform competitive rituals at the said Temple, or to dictate to them what rituals the defendants could perform there. As to damage, the third ingredient, it is settled law that the damage must be tangible damage in the form of physical injury to person or property or even pecuniary interests. No action lies from mere mental suffering.

Where is the damage of which the plaintiff complains? It lies in his apprehension that IF some untoward incident happens during the festival the plaintiff will be blamed and exposed to legal liability. What such an untoward event may be is not specified and we are left to speculate whether this could be a bolt of lightning out of a clear blue sky, or something more mundane like a traffic accident. Suffice it to say that such apprehensions do not constitute the kind of damage that a Court of law will entertain as constituting a basis for a claim and negligence. Accidents are caused. They don't just happen.

Arising out of the defendants advertisement accusing the plaintiff of defiling the Temple, plaintiffs Counsel both in his initial letter of demand and in this Court has stated that the plaintiff intends to commence proceedings for libel. Such proceedings, if they are filed, will no doubt give the plaintiff an excellent opportunity of proving that he is indeed the Yogi and Spiritualist which he claims to be. There is a wealth of material filed by the defendants in these proceedings which, if true, casts the gravest doubts on the plaintiffs credentials either as 293rd Gurumaha Sannithaanam or otherwise. Those doubts must be resolved some other time.

When I dismissed this application last Friday I said that this action was wholly misconceived. Today I feel obliged to say that the acts of the plaintiff on and about 4 October were also wholly misguided. At the best of times politics and religion is an explosive mixture. It is indeed a pity that the plaintiff permitted himself to be used as an instrument in what was a palpable political rally in a Temple which should only have been used for public worship. We can only hope that hereafter wiser and better Counsel will prevail.